

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

OLENA OLTAR,
Plaintiff

V.

KEVIN M. LEARY,
Defendant

Civil Action

No.

MAGISTRATE JUDGE ABP

RECEIPT #

AMOUNT \$ 150

SUMMONS ISSUED yes

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK. POW

DATE 12/13/04

PLAINTIFF'S COMPLAINT AND DEMAND FOR TRIAL

Now comes the Plaintiff in the above-entitled matter, and states as follows:

COUNT I

(GENERAL MARITIME LAW NEGLIGENCE)

1. The Plaintiff, Olena Oltar, is a resident of London, United Kingdom.
2. The Defendant, Kevin M. Leary, is a resident of Boston, Massachusetts.
3. On or about August 4, 2004, the Defendant owned the S/V SENNEN.
4. On or about August 4, 2004, the Defendant operated the S/V SENNEN.
5. On or about August 4, 2004, the Defendant controlled the S/V SENNEN.
6. At all relevant time periods, the S/V SENNEN was in navigable waters.
7. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332, in that the matter in controversy exceeds the sum of \$75,000 and is between a subject of the United Kingdom and the Commonwealth of Massachusetts, and 28 U.S.C. § 1333.
8. On or about July 31, 2004, the S/V SENNEN left Boston on a sailing trip to Bermuda.
9. As the S/V SENNEN proceeded from Boston toward Bermuda, Hurricane Alex was traveling in the general direction of the S/V SENNEN.

10. On or about August 4, 2004, as a result of very rough winds, waves, and weather due to the vessel's vicinity to Hurricane Alex, the S/V SENNEN lost power and communications, and was partially capsized.

11. On August 8, 2004, the Plaintiff, Defendant, and another crew member were rescued by another vessel.

12. During the sailing trip on the S/V SENNEN that lasted from July 31, 2004 to August 8, 2004, the Defendant was the captain of the S/V SENNEN.

13. During the sailing trip on the S/V SENNEN that lasted from July 31, 2004 to August 8, 2004, the Plaintiff was at all times under the direction and control of the Defendant.

14. As a proximate result of the Defendant's negligence in navigating the S/V SENNEN toward and through the storm and very bad weather created by the approach of Hurricane Alex, the partial capsizing of the S/V SENNEN, and then being adrift at sea as a result of said weather, the Plaintiff was caused to suffer pain of body and anguish of mind, lost time from her usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

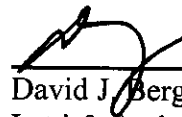
15. The Plaintiff's damages were not caused by any fault on the Plaintiff, but were caused by the negligence of the Defendant in his operation and control of the S/V SENNEN.

16. This cause of action is brought under the General Maritime Law.

WHEREFORE, the Plaintiff demands judgment against the Defendant in the amount of \$1,000,000.00, together with interest and costs.

THE PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES RAISED
IN THIS COMPLAINT.

Respectfully submitted for the
the Plaintiff, by her attorney,



David J. Berg, Esq.
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109
617-523-1000

Dated:

12/10/04

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Olana Oltar

DEFENDANTS

Kevin M. Leary

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David J. Berg, Latti and Anderson, LLP
30-31 Union Wharf
Boston, MA 02109
617-523-1000

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties IN Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State PTF ☐ DEF ☒ 1
- Citizen of Another State ☐ 2 ☐ 2
- Citizen or Subject of a Foreign Country ☒ 3 ☐ 3
- Incorporated or Principal Place of Business in This State PTF ☐ DEF ☐ 4
- Incorporated and Principal Place Of Business in Another State ☐ 5 ☐ 5
- Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/ PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment Of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ref. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition				

V. ORIGIN

(PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Magistrate Proceeding Original ☐ 2 Removed from ☐ 3 Remanded from ☐ 4 Reinstated or Transferred from ☐ 5 another district ☐ 6 Multidistrict Appeal to District
- ☐ 7 Judge from ☐ 8 Multidistrict Judgment
- State Court Appellate Court Reopened (Specify) Litigation Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) This is a negligence case brought under the General Maritime Law.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

DEMAND \$1,000,000.00

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions)

DATE 12/10/04 JUDGE DOCKET NUMBER
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Olena Oltar V. Kevin M. Leary
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- | | | | |
|---|------|---|--|
| — | I. | 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. | |
| — | II. | 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. | *Also complete AO 120 or AO 121 for patent, trademark or copyright cases |
| ✓ | III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. | |
| — | IV. | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. | |
| — | V. | 150, 152, 153. | |
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court? YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of Congress affecting the public interest? (See 28 USC §2403) YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party? YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284? YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)). YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
 Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
 Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions) YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David J. BergADDRESS 30-31 Union Wharf, Boston, MA 02109TELEPHONE NO. 617-523-1000